

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-7 are pending in the present application, Claim 1 having been amended. Support for the amendment to Claim 1 is found, for example, in Fig. 2, and in the specification at page 6, line 25 to page 7, line 3. Thus, no new matter is added.

In the outstanding Office Action, Claims 1, 2, and 5-7 were rejected under 35 U.S.C. §103(a) as unpatentable over Hayashi (U.S. Patent No. 6,655,483); Claim 3 was rejected under 35 U.S.C. §103(a) as unpatentable over Hayashi in view of Lamoreaux (U.S. Patent No. 4,655,307); and Claim 4 was rejected under 35 U.S.C. §103(a) as unpatentable over Hayahsi in view of Scaduto (U.S. Patent No. 5,686,818).

With respect to the rejection of Claim 1 as unpatentable over Hayashi, Applicant respectfully submits that the amendment to Claim 1 overcomes the outstanding ground of rejection. Claim 1 recites, *inter alia*, “the gear case is positioned on another side of the vehicle in the vehicle width direction and is supported by the vehicle body via a shock absorber.”

In a non-limiting embodiment of the claimed invention, a motor-driven rough-road running four-wheeled vehicle aims to ensure the running stability of the vehicle by concentrically arranging heavy weight elements in the central portion of the vehicle and lowering the center of gravity of the vehicle.¹ In order to safely run on a rough-road, it is necessary to support the wheels through a suspension mechanism and, for this purpose, support the gear case by the vehicle body through a shock absorber.

¹ Specification, page 3, lines 13-17.

The outstanding Office Action states "...Hayashi fails to explicitly teach the case connecting the motor with the rear axle as being a gear case."² Thus, Hayahsi fails to disclose or suggest the claimed "the gear case is positioned on another side of the vehicle in the vehicle width direction and is supported by the vehicle body via a shock absorber."

The outstanding Office Action cites no authority to support the position that it would be obvious for a person of ordinary skill in the art to replace the chain drive system of Hayashi with a gear set. It appears that the outstanding Office Action is correcting a deficiency in the references through Official Notice.

The Examiner may take Official Notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art. In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). As set forth in M.P.E.P. § 2144.03, if an Applicant traverses an assertion made by an Examiner while taking official notice, the Examiner should cite a reference in support of their assertion.

In addition, Applicant respectfully traverses those grounds for rejection relying of Official Notice. Applicants do not consider the features for which Official Notice were taken to be "of such notorious character that official notice can be taken." Therefore Applicants traverse this assertion. "The examiner should cite a reference in support of his or her position."³

Furthermore, Applicants note that it is improper for the PTO to correct deficiencies in the art with unsupported conclusions. See In re Zurko, 59 USPQ2d 1693, 1697-98 (Fed. Cir. 2001) as follows:

Finally, the deficiencies of the cited references cannot be remedied by the [PTO's] general conclusions about what is "basic knowledge" or "common sense" to one of ordinary skill in the art. As described above, the [PTO] contended that even

² Office Action, page 2.

³ MPEP 2144.03, page 2100-129, left column, second full paragraph of MPEP 2144.03.

if the cited UNIX and FILER2 references did not disclose a trusted path, “it is basic knowledge that communication in trusted environments is performed over trusted paths” and, moreover, verifying the trusted command in UNIX over a trusted path is “nothing more than good common sense.” *Ex parte Zurko*, slip op. at 8. We cannot accept these findings by the [PTO]. This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support. As an administrative tribunal, the [PTO] clearly has expertise in the subject matter over which it exercises jurisdiction. This expertise may provide sufficient support for conclusions as to peripheral issues. With respect to core factual findings in a determination of patentability, however, the [PTO] cannot simply reach conclusions based on its own understanding or experience — or on its assessment of what would be basic knowledge or common sense. Rather, the [PTO] must point to some concrete evidence in the record in support of these findings. [Emphasis added.]

Furthermore, Hayashi does not disclose or suggest that a chain drive is supported by the vehicle body via a shock absorber. Hayashi does not expressly disclose a chain drive, and it is unclear what the outstanding Office Action identifies as a chain drive in Hayashi. If the outstanding Office Action assumes that the unlabeled structure in Fig. 1 connecting motor 12 to the rear axel is a chain drive, then Applicant respectfully submits that Hayashi does not disclose or suggest that the chain drive is supported by the vehicle body via a shock absorber.

In view of the above-noted distinctions, Applicants respectfully submit that Claim 1 (and Claims 2-7) patentably distinguish over Hayashi.

Furthermore, Scaduto, Lamoreaux, Nakamori,⁴ and Nagura⁵ do not cure the above-noted deficiencies in Hayashi.

Scaduto does not describe or suggest a gear case, nor that a gear case is supported by the vehicle body via a shock absorber.

⁴ U.S. Patent Publication No. 2002/0066606. Nakamori was not relied upon in the outstanding Office Action, but was indicated as pertinent to Applicant’s disclosure.

⁵ U.S. Patent Publication No. 2002/0060100. Nagura was not relied upon in the outstanding Office Action, but was indicated as pertinent in Applicant’s disclosure

Lamoreaux, at col. 2, lines 28-29, and Fig. 2 describe motor 32 as being driven by chains and sprockets. However, Lamoreaux does not disclose or suggest that a gear case is supported by the vehicle body via a shock absorber.

Nakamori does not describe or suggest a gear case, nor that a gear case is supported by the vehicle body via a shock absorber.

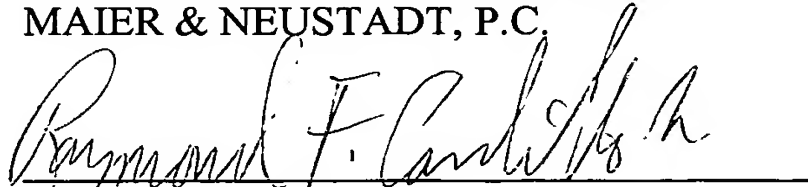
Nagura shows transmission 52 in Fig. 2, but does not disclose or suggest that the transmission includes a gear case, or that a gear case is supported by the body via a shock absorber.

In view of the above-noted distinctions, Applicant respectfully submits that amended Claim 1 (and Claims 2-7 dependent thereon) patentably distinguish over Hayahshi, Scaduto, Lamoreaux, Nakamori, and Nagura, taken alone or in proper combination.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Attorney of Record
Registration No. 25,599

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Raymond F. Cardillo, Jr.
Registration No. 40,440